

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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WAYNE THOMAS,

Petitioner,
-against-

ORDER

10-CV-3299 (CBA)

DUKE TERRELL, Warden, MDC Brooklyn,

Respondent.

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AMON, United States District Judge:

Petitioner Wayne Thomas, appearing pro se, who is currently detained at the Metropolitan Detention Center in Brooklyn, New York (“MDC”), moves this Court for a “sentencing reduction” pursuant to 28 U.S.C. § 2241. Petitioner was convicted in the United States District Court for the District of Maryland, see United States v. Thomas, 91-CR-00212-WDQ, where petitioner has already challenged his conviction by filing a motion pursuant 28 U.S.C. § 2255, see Thomas v. United States, 01-CV-00206 (FNS).

On December 23, 2009, petitioner filed a petition for a writ of audita querela which was transferred to the United States District Court for the District of Maryland. Thomas v. United States, 09-CV-5684 (CBA) (E.D.N.Y. Jan. 6, 2010). On February 2, 2010, petitioner filed a petition under § 2241 seeking to be transferred to a residential re-entry center which is currently pending. Thomas v. Terrell, 10-CV-512 (CBA). On March 12, 2010, petitioner filed a petition under § 2241 challenging his District of Maryland sentence which was dismissed. Thomas v. Terrell, 10-CV-1212 (CBA) (E.D.N.Y. Apr. 1, 2010). On May 18, 2010, petitioner filed a petition under § 2241 challenging his District of Maryland sentence – alleging that a violation of the federal criminal code should not have applied to him – which was also dismissed. Thomas v. Terrell, 10-CV-2299 (CBA) (E.D.N.Y. June 7, 2010).

In this, petitioner's fifth petition challenging his District of Maryland sentence, he now seeks a sentence reduction or a downward departure of his sentence based on "harsh incarceration" at MDC. However, § 2241 does not provide this Court with jurisdiction to grant a downward departure or otherwise reduce his sentence based on his incarceration at MDC. The cases cited by petitioner do not hold otherwise and solely concern the *sentencing* court's authority to consider the conditions of a defendant's *pretrial* or *presentence* confinement as a basis for a downward departure. See, e.g., United States v. Teyer, 322 F.Supp.2d 359, 377 (S.D.N.Y. 2004); Mateo v. United States, 299 F.Supp.2d 201, 211 (S.D.N.Y. 2004); United States v. Francis, 129 F.Supp.2d 612 (S.D.N.Y. 2001).

The Court reiterates that if petitioner wishes to challenge his federal sentence, he must file such a challenge in the United States District Court for the District of Maryland or, if his challenge to his sentence is second or successive pursuant to 28 U.S.C. § 2255(h), then he must seek authorization to file a successive motion in the United States Court of Appeals for the Fourth Circuit. See 28 U.S.C. § 2244.

Accordingly, this case is dismissed. The Court certifies pursuant to 28 U.S.C. § 1915(a) that any appeal from this Order would not be taken in good faith and therefore in forma pauperis is denied for the purpose of any appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: August 10, 2010
Brooklyn, New York

/S/


Carol Bagley Amón
United States District Judge